

## **EXHIBIT B-4**

**EXHIBIT B-4**

<p style="text-align: right;">Page 290</p> <p>1 FUERMAN</p> <p>2 APB No. 20. And by the way, if Dr. Prowse's</p> <p>3 numbers were used, it's true that there's a</p> <p>4 bit of an exaggeration. I looked at how his</p> <p>5 numbers would change things.</p> <p>6 The graph, instead of looking the</p> <p>7 way it does, would look approximately like</p> <p>8 this. This is the extent of my bias in my</p> <p>9 analysis. I frankly find it a bit much for</p> <p>10 Dr. Prowse to call this bias.</p> <p>11 Q. Although you do concede it's an</p> <p>12 unreasonable extrapolation?</p> <p>13 A. It's an unreasonable extrapolation</p> <p>14 if one has sufficient data, to do the kind of</p> <p>15 extrapolation that a professional would want</p> <p>16 to do according to the standards of Bernstein</p> <p>17 and Wild.</p> <p>18 Q. Which you did not have?</p> <p>19 A. I didn't have the data points to do</p> <p>20 that kind of analysis.</p> <p>21 Q. Does APB 20 say anything in any of</p> <p>22 its paragraphs that it relates to future EPS</p> <p>23 expectations of shareholders, is there</p> <p>24 anything in there that relates to that?</p> <p>25 A. The word "trends" is used.</p>	<p style="text-align: right;">Page 292</p> <p>1 FUERMAN</p> <p>2 A. Yes.</p> <p>3 Q. You also extrapolated out, without</p> <p>4 modification the lower 8 percent?</p> <p>5 A. That is correct.</p> <p>6 Q. So you assumed that never changed</p> <p>7 either?</p> <p>8 A. That is correct also.</p> <p>9 Q. If that did increase then that also</p> <p>10 would bring your two data points closer</p> <p>11 together, correct?</p> <p>12 A. That would, yeah.</p> <p>13 MR. BURKE: At this point in time,</p> <p>14 Professor Fuerman, I thank you for your</p> <p>15 time. I have no further questions.</p> <p>16 A. Thank you.</p> <p>17 MR. BURKE: Obviously consistent</p> <p>18 with what we talked about earlier, if</p> <p>19 there's ongoing work that you do or</p> <p>20 additional materials that you review, I'd</p> <p>21 ask that you tell Mr. Brautigam, and we</p> <p>22 may have the privilege of meeting again.</p> <p>23 A. By all means, I'd be happy to do so.</p> <p>24 MR. BURKE: Thank you.</p> <p>25 MR. BRAUTIGAM: Right, and we're</p>
<p style="text-align: right;">Page 291</p> <p>1 FUERMAN</p> <p>2 Q. That's not my question. Does it say</p> <p>3 anything in there about it is derived or</p> <p>4 defines future EPS expectations of</p> <p>5 shareholders?</p> <p>6 MR. BRAUTIGAM: Objection.</p> <p>7 A. To me, the use of the word "trends"</p> <p>8 suggests doing a trend analysis which is what</p> <p>9 I call this, or you could call it future</p> <p>10 expectations analysis. To me those are</p> <p>11 substantively the same.</p> <p>12 Q. Is this based upon what you've come</p> <p>13 across in your career, is this a generally</p> <p>14 accepted trend analysis that you are referring</p> <p>15 to, this figure one?</p> <p>16 A. I believe it's generally accepted in</p> <p>17 a situation -- this is an unusual situation.</p> <p>18 I've got a measly two data points. If I had a</p> <p>19 bunch of data points, say half a dozen, then I</p> <p>20 could do something more sophisticated that</p> <p>21 would take into account the variability of</p> <p>22 earnings from year to year.</p> <p>23 Q. In addition to extrapolating out</p> <p>24 continuously 24 percent, right, on your figure</p> <p>25 one?</p>	<p style="text-align: right;">Page 293</p> <p>1 FUERMAN</p> <p>2 going to get you at least some of the</p> <p>3 documents. Are you sticking around for</p> <p>4 my questioning?</p> <p>5 MR. BURKE: I don't know. Start</p> <p>6 asking, I'll decide if it's worth</p> <p>7 sticking around for.</p> <p>8 MR. BRAUTIGAM: I appreciate that.</p> <p>9 Your approval means so much to me. I</p> <p>10 take it you have no questions, sir?</p> <p>11 MR. HILLER: Not at this point.</p> <p>12 MR. BRAUTIGAM: So I can proceed?</p> <p>13 MR. HILLER: Yes.</p> <p>14 MR. BURKE: I do have a couple</p> <p>15 additional questions, Mike, if you don't</p> <p>16 mind? I do apologize.</p> <p>17 MR. BRAUTIGAM: No problem. No</p> <p>18 apology is necessary.</p> <p>19 Q. One of the items you gave to me,</p> <p>20 Dr. Fuerman, and we can have this marked, is</p> <p>21 this article in Business Week?</p> <p>22 A. Yes.</p> <p>23 Q. Auditing the Auditors. Apparently</p> <p>24 it's an article by Robert Barker?</p> <p>25 A. That is correct.</p>

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<p style="text-align: right;">Page 294</p> <p>1 FUERMAN</p> <p>2 Q. And he is referring to a study you</p> <p>3 came up with in terms of how to evaluate</p> <p>4 auditors?</p> <p>5 A. Right.</p> <p>6 Q. Based upon certain criteria?</p> <p>7 A. Right.</p> <p>8 Q. Without getting into the technical</p> <p>9 details. It is noted in the article, as you</p> <p>10 see, that certain of the auditors whom you</p> <p>11 ranked indicated that they referred to the</p> <p>12 study as unbelievable; is that correct?</p> <p>13 A. I think that may have been</p> <p>14 Deloitte Tush. They got the worse rating</p> <p>15 among the big six at that time.</p> <p>16 Q. Do you recall also that the article</p> <p>17 indicates other firms declined to comment</p> <p>18 publicly, but some privately questioned</p> <p>19 Fuerman's methods?</p> <p>20 A. It's to be expected whenever you</p> <p>21 publish a controversial study that not</p> <p>22 everybody will applaud.</p> <p>23 Q. You referred in your study to</p> <p>24 gentleman by the name of Peter Mosier?</p> <p>25 A. Yes, I did cite him.</p>	<p style="text-align: right;">Page 296</p> <p>1 FUERMAN</p> <p>2 Q. Good afternoon, Dr. Fuerman. My</p> <p>3 name is Michael G. Brautigam and, as you know,</p> <p>4 I represent the plaintiffs in this purported</p> <p>5 class action.</p> <p>6 Dr. Fuerman, I would like to hand</p> <p>7 you the March 5, 2003 press release and ask</p> <p>8 you to take a look about it. I think you</p> <p>9 misspoke previously with respect to the</p> <p>10 amounts?</p> <p>11 A. Yes. It was 70 million dollars</p> <p>12 restated in March 5th, 44 million April 15th</p> <p>13 of 2003. I reversed those inadvertently.</p> <p>14 MR. BURKE: Move to strike as</p> <p>15 leading. You may answer.</p> <p>16 Q. Dr. Fuerman, we've been through your</p> <p>17 resume and the articles you've published your</p> <p>18 and background in some detail. Do you</p> <p>19 remember doing this this morning with</p> <p>20 Mr. Burke?</p> <p>21 A. Yes.</p> <p>22 Q. Do you believe that your testimony</p> <p>23 on the accounting and auditing issues that</p> <p>24 you've been retained to opine on would assist</p> <p>25 the trier of fact?</p>
<p style="text-align: right;">Page 295</p> <p>1 FUERMAN</p> <p>2 Q. He is a University of Leeds</p> <p>3 Accounting Professor?</p> <p>4 A. That is correct.</p> <p>5 Q. The article at least quotes</p> <p>6 Peter Mosier who you've cited in your article</p> <p>7 as referring to your approach as "very</p> <p>8 cavalier"?</p> <p>9 A. I think the man has a lot of</p> <p>10 jealousy. It's not very many academics that</p> <p>11 get this kind of national and international</p> <p>12 recognition. I got e-mails from all over the</p> <p>13 world from investors, partners at C.P.A.</p> <p>14 firms.</p> <p>15 It's been a big joy to me and to my</p> <p>16 school. It's brought a lot of recognition to</p> <p>17 Suffolk University.</p> <p>18 MR. BURKE: I appreciate that. No</p> <p>19 further questions, Mike. Thanks for the</p> <p>20 consideration there.</p> <p>21 MR. BRAUTIGAM: Not a problem.</p> <p>22 (Fuerman Exhibit 7, document, marked</p> <p>23 for identification, as of this date.)</p> <p>24 EXAMINATION BY</p> <p>25 MR. BRAUTIGAM:</p>	<p style="text-align: right;">Page 297</p> <p>1 FUERMAN</p> <p>2 A. Yes.</p> <p>3 MR. BURKE: Objection, legal</p> <p>4 conclusion, leading.</p> <p>5 A. I believe that they would very much</p> <p>6 assist the trier of fact because these issues</p> <p>7 are in some respects clearcut, but in others</p> <p>8 they are technical and complex.</p> <p>9 Q. Now, Dr. Fuerman, I would like to</p> <p>10 suggest that you because between my question</p> <p>11 and your answer, because it's just a wild</p> <p>12 guess, but I think Mr. Burke might be</p> <p>13 objecting. So we'll have a clear record if</p> <p>14 you do that.</p> <p>15 Please describe, for the record,</p> <p>16 what areas you intend to opine on are</p> <p>17 relatively straight forward and what areas are</p> <p>18 more complex?</p> <p>19 A. To me it is very straight forward,</p> <p>20 notwithstanding the objections of defendants,</p> <p>21 that when a company issues financial</p> <p>22 statements and subsequently restates them, the</p> <p>23 originally reported financial statements are</p> <p>24 materially misstated. That is in my</p> <p>25 understanding among the accounting and</p>

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1 FUERMAN

2 auditing experts in academe and practice

3 well-accepted. It is not seriously in

4 dispute.

5 So long as it is the kind of

6 financial statement restatement that I've

7 talked about, that is not prompted by one of

8 the few exceptions in APB 20, such as a switch

9 from LIFO to FIFO or a pooling of interests

10 merger that occurs shortly after fiscal

11 yearend or a restatement prompted by a new

12 issuance of a standard by the FASB, the EITF,

13 the SAB or the SEC.

14 Q. Dr. Fuerman, why do companies issue

15 financial statements?

16 A. They issue them so that people

17 external to the company can have a good idea

18 on what is going on financially at the

19 company, on what the company's financial

20 performance has been and what its financial

21 company is as of the balance sheet date.

22 Q. Dr. Fuerman, would you pick up what

23 has been marked as Fuerman 6, that's

24 APB No. 20. Would you have that in front of

25 you, or you can use your own copy.

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1 FUERMAN

2 Do you believe that your

3 interpretation of APB No. 20 would assist the

4 trier of fact in understanding the concepts

5 involved in this case?

6 MR. BURKE: Objection, leading,

7 legal conclusion.

8 A. I believe it would assist the trier

9 of fact in understanding important aspects of

10 this case. APB No. 20 although in some

11 respects clearcut, in others is a bit complex

12 to understand. It's difficult to interpret

13 without having a good grasp of the overall

14 accounting and auditing literature.

15 Q. Now, you mentioned earlier that it

16 was your view that APB 20 was not written by

17 English majors. Do you remember that

18 testimony?

19 MR. BURKE: Objection, leading.

20 A. Yes.

21 Q. Dr. Fuerman, why did you bother to

22 write an expert report when Mr. Burke seems to

23 suggest that you could sign your name and date

24 APB 20 and submit that?

25 MR. BURKE: Objection, leading.

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1 FUERMAN

2 A. I wrote an expert opinion because

3 not everybody is able to sit down and absorb

4 and understand APB Opinion No. 20. It really

5 requires some expertise, knowledge of the

6 surrounding accounting, auditing literature

7 and how it has been generally interpreted in

8 accounting and auditing academe and practice.

9 Q. Do you believe that your report

10 would assist the trier of fact in

11 understanding those things you just talked

12 about?

13 MR. BURKE: Objection, asked and

14 answered, leading.

15 A. I believe that my testimony would be

16 very helpful in understanding. For example,

17 there is some confusion I've noticed in

18 preparing these expert reports, between the

19 way "restatements" are understood in the

20 financial press, compared to the way they are

21 understood in the accounting and auditing

22 literature.

23 Therefore, simply relying on the

24 financial press could lead to a bad result

25 conceivably in this case. It's important to

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1 FUERMAN

2 understand the accounting and auditing

3 literature, how it interprets APB No. 20.

4 Q. Dr. Fuerman, at least some of the

5 confusion in this case extends to a CEO of

6 Provident, a CFO, and I believe they've

7 testified to two different things. I believe

8 Mr. Hoverson has testified there were two

9 restatements and I believe Mr. Carrie has

10 testified there was one restatement

11 communicated via two announcements.

12 Are you familiar with this

13 discrepancy?

14 MR. BURKE: Continuing objection to

15 leading.

16 A. I'm familiar with some financial

17 press journalists. Some parties to this

18 litigation have at times thought of there

19 having been one restatement, two announcements

20 and other times two restatements. But there's

21 not, in my opinion, a substantive difference

22 between whether there was one restatement or

23 two restatements. It's the same under the

24 accounting and auditing literature.

25 Q. Dr. Fuerman, is APB 20 something

<p style="text-align: right;">Page 302</p> <p>1 FUERMAN</p> <p>2 that you've memorized?</p> <p>3 A. It is not something I've memorized.</p> <p>4 It's too much to attempt to memorize. The</p> <p>5 important thing is to understand it enough to</p> <p>6 apply it in a given situation, which I feel I</p> <p>7 have done.</p> <p>8 Q. Now, Dr. Fuerman, when Mr. Burke</p> <p>9 questioned you earlier in the day about what</p> <p>10 you first did when you were considering the</p> <p>11 assignment, I believe you testified in</p> <p>12 substance that you went back and reviewed very</p> <p>13 carefully APB No. 20; is that correct?</p> <p>14 A. That is correct.</p> <p>15 Q. And why did you do that?</p> <p>16 A. Well, I read APB Opinion No. 20</p> <p>17 years ago, certainly before I began my</p> <p>18 restatements research, which is part of my</p> <p>19 dissertation, back in 1994. I've worked with</p> <p>20 restatements ever since, wrestled with various</p> <p>21 problems of restatements.</p> <p>22 But, still, I wanted to make sure I</p> <p>23 had a fairly good understanding of APB No. 20</p> <p>24 and, most important, I wanted to understand</p> <p>25 what this case is about and whether my</p>	<p style="text-align: right;">Page 304</p> <p>1 FUERMAN</p> <p>2 Q. Please continue.</p> <p>3 MR. BURKE: Wait a minute.</p> <p>4 Objection, leading.</p> <p>5 A. I think it would be expected to go</p> <p>6 back and review APB No. 20.</p> <p>7 Q. Now, Dr. Fuerman, you testified that</p> <p>8 you are a certified fraud examiner and the</p> <p>9 training that you received in some detail. Do</p> <p>10 you remember that testimony?</p> <p>11 A. Yes.</p> <p>12 Q. You believe that it's appropriate</p> <p>13 for you to render an opinion with respect to</p> <p>14 the honesty of some of the witnesses in this</p> <p>15 case; is that correct?</p> <p>16 A. I believe that's correct. I should</p> <p>17 note that my rendering an opinion as to the</p> <p>18 motivations of the statements of executives</p> <p>19 and audit committee members of PFGI, with</p> <p>20 regard to the restatements and APB No. 20,</p> <p>21 that really is simply ancillary to my analysis</p> <p>22 of restatements and materiality and the nexus</p> <p>23 between the two.</p> <p>24 It seems appropriate in this context</p> <p>25 to render an opinion as to their opinion of</p>
<p style="text-align: right;">Page 303</p> <p>1 FUERMAN</p> <p>2 knowledge, my expertise would be appropriate</p> <p>3 in this case. So I needed to review</p> <p>4 APB No. 20 and other materials in order to do</p> <p>5 that.</p> <p>6 Q. Do you believe that is a good</p> <p>7 practice?</p> <p>8 A. Oh, I think it's critical. I just</p> <p>9 got in my most recent Journal of Accountancy</p> <p>10 that came in the mail a few days ago, an</p> <p>11 article on expert witnesses by Larry Crumbly,</p> <p>12 who urges anyone who considers becoming an</p> <p>13 expert witness to do some research and think</p> <p>14 and discuss with counsel whether they have the</p> <p>15 appropriate expertise to be a true expert</p> <p>16 witness in any particular court case.</p> <p>17 Q. So if another accounting and</p> <p>18 auditing expert was considering rendering an</p> <p>19 opinion with respect to issues that affected</p> <p>20 APB No. 20, if he or she went back to</p> <p>21 APB No. 20 and read it carefully as an initial</p> <p>22 starting point, you wouldn't fault that</p> <p>23 behavior, correct?</p> <p>24 A. No, of course not.</p> <p>25 MR. BURKE: Objection, leading.</p>	<p style="text-align: right;">Page 305</p> <p>1 FUERMAN</p> <p>2 this issue.</p> <p>3 Q. Dr. Fuerman, please tell me when you</p> <p>4 decided that you would accept this assignment?</p> <p>5 A. This probably was, I can't recall</p> <p>6 exactly, I think it was in October of 2003.</p> <p>7 I'm guessing it was October 2003 that we first</p> <p>8 discussed and then we maybe had a subsequent</p> <p>9 phone call or two, exchanged information.</p> <p>10 I see from my time sheet that I</p> <p>11 began -- it appears I began working sometime</p> <p>12 in November, maybe late November on this. So</p> <p>13 I don't have a specific date, but my best</p> <p>14 guess is mid to late October I decided to take</p> <p>15 on this engagement.</p> <p>16 Q. Now, Dr. Fuerman, once you decided</p> <p>17 to take on the engagement, was there anything</p> <p>18 stated or expected where you would suspend</p> <p>19 common sense?</p> <p>20 MR. BURKE: Objection, leading.</p> <p>21 A. No, certainly not. I think any</p> <p>22 expert witness needs to have common sense to</p> <p>23 be able to translate his expertise into words</p> <p>24 and phrases that layman will understand.</p> <p>25 That's what I understand an important function</p>

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1 FUERMAN  
2 of an expert witness to be.  
3 Q. Now, Dr. Fuerman, you testified with  
4 respect to what I think you've described as  
5 deceptive verbal behaviors?  
6 A. Correct.  
7 Q. That you learned about in part from  
8 your training as a certified fraud examiner;  
9 is that correct?  
10 A. That's correct.  
11 MR. BURKE: Objection, leading.  
12 A. I learned about that from my studies  
13 to become a certified fraud examiner, by my  
14 continuing studies in developing and teaching  
15 my fraud examination course at  
16 Suffolk University. I created that course at  
17 Suffolk University. I was one of the first  
18 people in Boston to offer such a course.  
19 I've continued with these studies by  
20 further reading and by attending a workshop  
21 put on by PricewaterhouseCoopers this summer.  
22 This area of interviewing and interrogation,  
23 as suggested by the committee on audit  
24 effectiveness, when it came out with its  
25 report in the year 2000, has become much

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1 FUERMAN  
2 bigger in the audit practice of all the C.P.A.  
3 firms. It's getting much more emphasis.  
4 There's much more recognition that  
5 auditors need to be more than number jugglers.  
6 They need to also have strong interviewing and  
7 interrogation skills.  
8 They need to understand things like  
9 statement analysis, which is what I performed  
10 when I read the depositions and tried to  
11 determine whether statements made by  
12 executives of Provident and audit committee  
13 members of Provident, whether they were  
14 correct or incorrect, and if they were  
15 incorrect whether they were incorrect because  
16 of mistake or intentionally incorrect.  
17 Q. Now, Dr. Fuerman, you talked about  
18 PWC and a four-day conference in fraud  
19 examination that you attended this summer. Is  
20 that the same PricewaterhouseCoopers that  
21 performed the PWC report in this case?  
22 A. Yes, it is. It's a C.P.A. firm that  
23 I have a great deal of respect for, both in  
24 terms of their professionalism and competence  
25 and their public service, in helping the

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1 FUERMAN  
2 accounting professors of the United States in  
3 this way.  
4 So if I have any bias it may be that  
5 I'm biased towards PWC. Almost our number one  
6 most famous graduate of all is one of the top  
7 executives of PWC, John O'Connor.  
8 Q. When you reviewed the deposition  
9 transcripts where you rendered an opinion with  
10 respect to the veracity of the witnesses, did  
11 you note any conduct on behalf of the person  
12 or persons defending the deposition that were  
13 similar to my conduct here today?  
14 MR. BURKE: Objection, leading.  
15 Q. Perhaps I said that backwards. Did  
16 my conduct here today remind you of the  
17 conduct of the attorneys who were defending  
18 the depositions that you reviewed, where you  
19 rendered an opinion with respect to the  
20 veracity of the witnesses?  
21 MR. BURKE: Objection, leading.  
22 A. Well, there was a stark contrast  
23 between the behavior of yourself and the  
24 defense counsel, according to the deposition  
25 transcripts that I read. Part of it may have

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1 FUERMAN  
2 to do with differences in personality and  
3 strategies, but also part of it has to do with  
4 the problematic situation of Dr. Tuzin. When  
5 Dr. Tuzin was asked, I noticed on the  
6 transcript frequently Dr. Tuzin would be asked  
7 a question and he would be shielded from  
8 answering by objections from defense counsel,  
9 or especially related to conversations between  
10 Dr. Tuzin and defense counsel that had been  
11 previously held and this apparently was  
12 purportedly privileged and, therefore, there  
13 could not be a forcible disclosure at the  
14 deposition.  
15 This is in stark contrast to my own  
16 deposition where I had no such privilege.  
17 This strikes me as, and again, I am not a  
18 practicing lawyer. I cannot with correct  
19 exactitude draw the distinction between a fact  
20 witness and an expert witness, but it seems to  
21 me to be fundamentally unfair just from a  
22 layman's point of view.  
23 To treat one expert witness one way  
24 and another a different way that is  
25 preferential to the one side, it seems to me



<p style="text-align: right;">Page 310</p> <p>1 FUERMAN</p> <p>2 just as a matter of just basic rough justice</p> <p>3 that this is not right, that this has been</p> <p>4 going on.</p> <p>5 MR. BURKE: Objection. Move to</p> <p>6 strike as speculation and nonresponsive.</p> <p>7 Q. Dr. Fuerman, are you familiar with</p> <p>8 what lawyers sometimes refer to as "coaching</p> <p>9 the witness?</p> <p>10 MR. BURKE: Objection, speculation.</p> <p>11 He already indicated this.</p> <p>12 A. I'm familiar with that. I think</p> <p>13 that there may have been some coaching in this</p> <p>14 case. I know that if I were an employee of a</p> <p>15 company and somebody wanted me to hold myself</p> <p>16 out as an expert witness, I know just from my</p> <p>17 reading of articles in Journal of Accountancy,</p> <p>18 by Larry Crumbly, that that just doesn't make</p> <p>19 sense.</p> <p>20 That you can be an expert witness on</p> <p>21 the one hand and retain privilege by virtue of</p> <p>22 being protect by that lawyer under some</p> <p>23 attorney-client privilege on the other, it</p> <p>24 just doesn't seem to me that it's right that</p> <p>25 it's not gravy for the goose, gravy for the</p>	<p style="text-align: right;">Page 312</p> <p>1 FUERMAN</p> <p>2 I as a member of the AICPA am bound</p> <p>3 by those rules. Now, of course, not every</p> <p>4 expert witness is a member of the AICPA and</p> <p>5 bound by such rules.</p> <p>6 It just stands to reason that one</p> <p>7 expert witness be bound by such rules and</p> <p>8 another not, when the whole subject matter is</p> <p>9 of the impact of an accounting restatement,</p> <p>10 which is clearly in the Bailiwick of</p> <p>11 accounting and auditing, it just doesn't seem</p> <p>12 to make sense.</p> <p>13 MR. BURKE: Objection, move to</p> <p>14 strike as speculation.</p> <p>15 Q. Now, Dr. Fuerman, when you were</p> <p>16 considering whether or not to accept this</p> <p>17 engagement, did you consider whether or not</p> <p>18 you would be independent in this matter?</p> <p>19 A. Yes, I did. I concluded that I</p> <p>20 would be independent. I base this on several</p> <p>21 grounds.</p> <p>22 My research, the articles that I've</p> <p>23 written I believe are not overly favoring</p> <p>24 either the plaintiffs or the defendants in the</p> <p>25 matter of securities litigation. Over the</p>
<p style="text-align: right;">Page 311</p> <p>1 FUERMAN</p> <p>2 gander, in terms of treating all the expert</p> <p>3 witnesses as the same thing.</p> <p>4 I don't think you get around that by</p> <p>5 simply not using the word "expert" in</p> <p>6 documents that you file with the court, that</p> <p>7 have Dr. Tuzin's name attached to them.</p> <p>8 MR. BURKE: Objection, move to</p> <p>9 strike as speculation.</p> <p>10 Q. Dr. Fuerman, you are familiar with</p> <p>11 the word "independence," and also the concept</p> <p>12 of "independence" as accountants and auditors</p> <p>13 use the word; is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. The word "independent" as in report</p> <p>16 of the independent auditors appears in the</p> <p>17 opinion letter; correct?</p> <p>18 A. That's correct. Now, the</p> <p>19 independence of an expert witness is a bit</p> <p>20 different than the independence required of a</p> <p>21 financial statement auditor, under the ethics</p> <p>22 rules of the AICPA. However, even an expert</p> <p>23 witness under the AICPA rules is expected to</p> <p>24 have a certain level of objectivity and</p> <p>25 independence.</p>	<p style="text-align: right;">Page 313</p> <p>1 FUERMAN</p> <p>2 years I've been assisted by many attorneys,</p> <p>3 both plaintiffs and defendants, in carrying</p> <p>4 out my research and providing input and</p> <p>5 providing documents.</p> <p>6 In fact, my most recent research</p> <p>7 which is not yet published but is a bit</p> <p>8 similar to my most recently published</p> <p>9 research, which is listed as the first article</p> <p>10 in my resume, has been criticized by some as</p> <p>11 being overly favoring the big four. I</p> <p>12 conclude that the big four were significantly</p> <p>13 higher quality auditors than Arthur Anderson.</p> <p>14 Some people criticize that.</p> <p>15 They say oh, there's really no</p> <p>16 difference between the way Anderson was and</p> <p>17 the other big four, but my research is based</p> <p>18 on my own ideas and thoughts and opinions. I</p> <p>19 am paid for my time as an expert witness and</p> <p>20 as a university professor, but my judgment as</p> <p>21 to what are the relevant -- what's the</p> <p>22 relevant data and what are the conclusions I</p> <p>23 should draw, those are my own.</p> <p>24 Q. Dr. Fuerman, were you able to reach</p> <p>25 a conclusion as to whether or not the</p>

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1 FUERMAN  
2 affidavits and, more recently, the expert  
3 reports submitted by Dr. Tuzin is independent?  
4 MR. BURKE: Can you repeat that,  
5 please.  
6 (Record read.)  
7 MR. BURKE: Objection calls for  
8 speculation.  
9 A. In my opinion, if Dr. Tuzin were a  
10 member of the AICPA he would clearly be in  
11 violation of the AICPA ethics code in holding  
12 himself out as an expert witness in a case  
13 where his company is a defendant.  
14 Q. Now, Dr. Tuzin is an economist; is  
15 that right?  
16 A. That is correct.  
17 Q. You've reviewed the materials he  
18 submitted; is that correct?  
19 A. That is correct.  
20 Q. Dr. Prowse is an economist; is that  
21 correct?  
22 A. That's correct.  
23 Q. You've reviewed the materials he  
24 submitted?  
25 A. I have reviewed the materials both

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1 FUERMAN  
2 these gentleman have submitted. They appear  
3 to be highly educated and intelligent people.  
4 However, their knowledge of accounting and  
5 auditing is very limited, especially in the  
6 case of Dr. Tuzin.  
7 To start with Dr. Tuzin, in addition  
8 to his own admission that he only has one  
9 semester of accounting, and I can tell you  
10 what the level of knowledge is of a college  
11 student after they have finished one semester  
12 of accounting, it's not pretty. In addition  
13 to that problem, his motive analysis is  
14 completely foreign to what is dictated by  
15 APB No. 20, and also is completely foreign to  
16 every kind of financial statement analysis  
17 suggested by Bernstein and Wild or any other  
18 authors who write on financial statement  
19 analysis.  
20 They consider, as I, it to be  
21 important the variability of earnings from one  
22 period to another. The notion that the  
23 variability of stock price from one day to  
24 another has some importance in determining  
25 whether the originally issued financials were

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1 FUERMAN  
2 materially misstated is ridiculous.  
3 Insofar as Dr. Prowse, his testimony  
4 has at least some rational basis. He appears  
5 to at least have read my report. I'm not sure  
6 Dr. Tuzin had, otherwise, he will not refer to  
7 me as Mr. Ralph Fuerman.  
8 But I believe that Dr. Prowse is on  
9 a higher level. Notwithstanding that  
10 Dr. Prowse is on a higher level, his analysis  
11 also completely violates the spirit and  
12 teachings of APB No. 20, in that he is  
13 using -- he alleges that I use the incorrect  
14 earnings per share numbers in my computation,  
15 but and should use instead the numbers that he  
16 suggests.  
17 His suggestion is completely  
18 incorrect in terms of what APB No. 20  
19 dictates. His suggestion that we should look  
20 at what the analysts were projecting for  
21 earnings per share, as of December '99 or  
22 December 2000, is also not supported by the  
23 language or the interpretations of accounting  
24 principles board Opinion No. 20.  
25 MR. BURKE: Objection, move to

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1 FUERMAN  
2 strike as speculation.  
3 Q. Now, Dr. Fuerman I want to break  
4 this up. It doesn't surprise you that  
5 Dr. Tuzin doesn't understand APB No. 20  
6 because he is not an accountant, correct?  
7 MR. BURKE: Objection, leading.  
8 A. He would be -- Dr. Tuzin would be  
9 probably the first person in history to  
10 understand -- to even know of the existence of  
11 APB No. 20, let alone how to read and  
12 understand it after one semester of college  
13 accounting. He has no knowledge at all of  
14 accounting.  
15 MR. BURKE: Objection, move to  
16 strike as speculation. You may answer.  
17 Q. Dr. Fuerman, you've seen testimony  
18 of others such as Tony Stahlings, Provident's  
19 Chief Accounting Officer and Chris Carrie,  
20 Provident's Chief Financial Officer saying  
21 they never turned to Dr. Tuzin for accounting  
22 advice, correct?  
23 MR. BURKE: Objection, leading.  
24 A. I've seen that company, but they  
25 wouldn't need to testify to me about that. I



<p style="text-align: right;">Page 318</p> <p>1 FUERMAN</p> <p>2 know what my college kids know after one</p> <p>3 semester of accounting, it's just not much.</p> <p>4 By his own admission, he had just one semester</p> <p>5 of accounting.</p> <p>6 The thing that is also bizarre about</p> <p>7 Dr. Tuzin is that he, by his own admission in</p> <p>8 the various deposition transcripts, was one of</p> <p>9 the people who made the erroneous estimates</p> <p>10 and calculations used to come up with the</p> <p>11 non-GAAP accounting used by Provident.</p> <p>12 I hate to say it, his behavior now</p> <p>13 in testifying that oh, don't worry, these</p> <p>14 financials were not materially misstated, it</p> <p>15 looks to me as an attempt to exculpate his own</p> <p>16 mess-up. I will also note, for the record,</p> <p>17 that he is completely out of the business now</p> <p>18 of performing estimates and calculations for</p> <p>19 things that will be used in the financial</p> <p>20 statements of publicly held companies.</p> <p>21 Now he is in another business, some</p> <p>22 sort of equity valuation business.</p> <p>23 MR. BURKE: Objection, move to</p> <p>24 strike as speculation.</p> <p>25 Q. With respect to your prior testimony</p>	<p style="text-align: right;">Page 320</p> <p>1 FUERMAN</p> <p>2 understanding from -- not from reading the</p> <p>3 legal tomes, but just from the basic things</p> <p>4 that are discussed in Larry Crumbly's Journal</p> <p>5 of Accountancy article, in the most recent</p> <p>6 issue.</p> <p>7 Q. Let's talk about Dr. Prowse briefly.</p> <p>8 I understand it's your opinion that Dr. Prowse</p> <p>9 violated the letter in the spirit of APB 20;</p> <p>10 is that fair?</p> <p>11 MR. BURKE: Objection, leading.</p> <p>12 A. That is fair. I would, however,</p> <p>13 commend Dr. Prowse for doing a better job than</p> <p>14 Dr. Tuzin, in that he seems to have at least</p> <p>15 some understanding of financial statements,</p> <p>16 not much, but at least a scintilla of</p> <p>17 knowledge on the subject.</p> <p>18 Q. Dr. Prowse appears to be independent</p> <p>19 in the sense that, A, he never worked at</p> <p>20 Provident and, B, he was never involved in</p> <p>21 issues relating to the restatements, correct?</p> <p>22 MR. BURKE: Objection, leading.</p> <p>23 A. He appears to be independent in that</p> <p>24 respect. To my knowledge, he's never been an</p> <p>25 employee of Provident so I cannot fault him on</p>
<p style="text-align: right;">Page 319</p> <p>1 FUERMAN</p> <p>2 to Dr. Tuzin, in effect, was he opining on his</p> <p>3 own work and concluded that he did nothing</p> <p>4 wrong?</p> <p>5 MR. BURKE: Objection, leading.</p> <p>6 A. That's exactly what he was doing.</p> <p>7 That's just so clearly obvious. I just think</p> <p>8 that the Dr. Tuzin mess is something that</p> <p>9 really should come to an end, that it's not</p> <p>10 right that one expert witness be disadvantaged</p> <p>11 relative to another.</p> <p>12 MR. BURKE: Objection, move to</p> <p>13 strike as speculation.</p> <p>14 Q. Now, Dr. Fuerman, under what</p> <p>15 standards would what we've discussed Dr. Tuzin</p> <p>16 doing be appropriate, and you can include</p> <p>17 common sense as a standard?</p> <p>18 MR. BURKE: Objection, leading,</p> <p>19 form.</p> <p>20 A. Well, it would be perfectly</p> <p>21 appropriate for him to work as an employee of</p> <p>22 a company doing estimates and computations</p> <p>23 that would be used for various purposes, but</p> <p>24 not for him to hold himself out as an expert</p> <p>25 witness in a court case. This is my</p>	<p style="text-align: right;">Page 321</p> <p>1 FUERMAN</p> <p>2 those grounds. Putting aside objections as to</p> <p>3 the backgrounds of these two individuals, I</p> <p>4 think just sticking to the arguments that they</p> <p>5 made versus the ones that I made, mine are</p> <p>6 entirely consistent and within the spirit of</p> <p>7 APB No. 20, theirs are not.</p> <p>8 MR. BURKE: Objection, move to</p> <p>9 strike as speculation.</p> <p>10 Q. Now, Dr. Fuerman, have you read any</p> <p>11 expert reports produced by Provident where</p> <p>12 they've hired a C.P.A., an expert in GAAP and</p> <p>13 GAS, to directly rebut your report?</p> <p>14 A. No, they have not. I find that very</p> <p>15 perplexing. Perhaps Provident doesn't want to</p> <p>16 win this case.</p> <p>17 I assumed that if Provident wanted</p> <p>18 to win this case they would have -- they would</p> <p>19 have engaged expert witness that would</p> <p>20 challenge me. The people I cite for their</p> <p>21 restatements research and cite me for my</p> <p>22 restatements research, some of those people</p> <p>23 are very knowledgeable and distinguished and</p> <p>24 could conceivably offer a serious challenge to</p> <p>25 my testimony. Instead, both Dr. Tuzin and</p>

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<p style="text-align: right;">Page 322</p> <p>1 FUERMAN</p> <p>2 Dr. Prowse seem to have the notion that</p> <p>3 obfuscation is a winning strategy in this</p> <p>4 litigation. I don't understand that.</p> <p>5 MR. BURKE: Move to strike as</p> <p>6 ridiculous speculation.</p> <p>7 Q. Dr. Fuerman, you are familiar with</p> <p>8 GAAP and GAS, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And you are an expert in accounting</p> <p>11 and auditing, correct?</p> <p>12 A. That is correct.</p> <p>13 Q. Please tell me in lowest terms, as</p> <p>14 best you can, what is an "audit"?</p> <p>15 MR. BURKE: Objection.</p> <p>16 A. An "audit" is a review or an</p> <p>17 investigation on the historical financial</p> <p>18 statements, usually the annual financial</p> <p>19 statements of a company. It contrasts with a</p> <p>20 review or compilation which are much less</p> <p>21 rigorous, and the audit performs the function</p> <p>22 of providing the highest level of assurance to</p> <p>23 the users of the financial statements that the</p> <p>24 financial statements can be relied upon.</p> <p>25 Q. Who are "users" of financial</p>	<p style="text-align: right;">Page 324</p> <p>1 FUERMAN</p> <p>2 Commission. They are not required of</p> <p>3 privately held companies or companies -- there</p> <p>4 may be some companies in some countries that,</p> <p>5 even though publicly held, are not required to</p> <p>6 have audited financial statements. That's</p> <p>7 possible, I don't know.</p> <p>8 Q. In addition to being a requirement,</p> <p>9 is there any benefit that the company derives</p> <p>10 from having an independent audit performed?</p> <p>11 A. Oh, clearly. The history of</p> <p>12 accounting and auditing shows that there was</p> <p>13 even some kind of primitive accounting</p> <p>14 auditing, as well as accounting, going on in</p> <p>15 ancient times; in the time of the Pharaohs in</p> <p>16 Egypt and in the Greek City States.</p> <p>17 More recently, before the Securities</p> <p>18 acts in 1993 and the Securities Exchange Act</p> <p>19 in 1994, it was not required but, nonetheless,</p> <p>20 there were many companies in the United States</p> <p>21 that got audits because it was felt that this</p> <p>22 would be of such great benefit to enhance the</p> <p>23 credibility of the financial statements, that</p> <p>24 this would instill investor confidence in</p> <p>25 investing in their companies specifically.</p>
<p style="text-align: right;">Page 323</p> <p>1 FUERMAN</p> <p>2 statements?</p> <p>3 A. The "users" of financial statements</p> <p>4 according to the accounting auditing</p> <p>5 literature are a diverse group. They include</p> <p>6 shareholders of the corporation, potential</p> <p>7 shareholders, bondholders, creditors, trade</p> <p>8 creditors. They could even include</p> <p>9 governments employees, in a broad sense those</p> <p>10 are also stakeholders.</p> <p>11 I think, first and foremost, the</p> <p>12 intent of the financial accounting standards</p> <p>13 is to look to the interests of the</p> <p>14 shareholders of the company, in a sense the</p> <p>15 owners of the company, although that is</p> <p>16 debated among scholars as exactly who are the</p> <p>17 owners of a corporation, nonetheless, there is</p> <p>18 an acknowledgment that they are very, very</p> <p>19 important users of the financial statements.</p> <p>20 MR. BURKE: Move to strike as</p> <p>21 nonresponsive and speculative.</p> <p>22 Q. Are audits required?</p> <p>23 A. Audits are required of publicly held</p> <p>24 companies in the United States that file their</p> <p>25 financials with the Securities Exchange</p>	<p style="text-align: right;">Page 325</p> <p>1 FUERMAN</p> <p>2 So clearly there is a huge value in</p> <p>3 audits being performed on financial</p> <p>4 statements.</p> <p>5 MR. BURKE: Objection.</p> <p>6 (Recess taken.)</p> <p>7 MR. BRAUTIGAM: Could you read the</p> <p>8 last question and answer back, please.</p> <p>9 MR. BURKE: Mike, we talked off the</p> <p>10 record and you indicated you were going</p> <p>11 another hour or so with similar</p> <p>12 questioning to what has been asked up to</p> <p>13 this point in time. I indicated that I'm</p> <p>14 not going it stay around for that.</p> <p>15 I will note, for the record, given</p> <p>16 the fact that I assume you will be</p> <p>17 continuing in a similar line, a</p> <p>18 continuing objection to leading and a</p> <p>19 continuing objection to questions seeking</p> <p>20 to elicit speculation about this witness</p> <p>21 has no first-hand knowledge and go beyond</p> <p>22 the expertise.</p> <p>23 I'll note the continuing objection</p> <p>24 to the examination based upon that. I</p> <p>25 did indicate there's one or two questions</p>

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<p style="text-align: right;">Page 326</p> <p>1 FUERMAN</p> <p>2 I have before I leave and you kindly and</p> <p>3 graciously agreed I could ask these two</p> <p>4 questions, and then you could continue</p> <p>5 with the with the of your examination.</p> <p>6 MR. BRAUTIGAM: Absolutely.</p> <p>7 BY MR. BURKE:</p> <p>8 Q. Two brief points, Professor Fuerman.</p> <p>9 You indicated you have some familiarity with</p> <p>10 PWC or PricewaterhouseCoopers?</p> <p>11 A. That's correct.</p> <p>12 Q. You indicate that you have a great</p> <p>13 deal of trust and confidence in the quality of</p> <p>14 the work performed by that organization?</p> <p>15 A. I believe I said I have a lot of</p> <p>16 respect for their competence, professionalism,</p> <p>17 and also their public spiriting in helping the</p> <p>18 Account Professors of the United States by</p> <p>19 hosting a workshop for us in the summer.</p> <p>20 Q. You also realize that they provided</p> <p>21 a report in this case?</p> <p>22 A. Yes.</p> <p>23 Q. Have you read that report?</p> <p>24 A. Yes.</p> <p>25 Q. Anything in there that you saw that</p>	<p style="text-align: right;">Page 328</p> <p>1 FUERMAN</p> <p>2 you rendered your expert report on August 8,</p> <p>3 2004. Do you remember that?</p> <p>4 A. Yes.</p> <p>5 Q. We talked about Mr. Carrie's</p> <p>6 California deposition which you reviewed last</p> <p>7 night?</p> <p>8 A. Yes, I reviewed it last night.</p> <p>9 Q. I think when Mr. Burke was here we</p> <p>10 did not mention you also reviewed a Wall</p> <p>11 Street Journal Article from, if memory serves,</p> <p>12 September 22, 2004 that appeared on the front</p> <p>13 page regarding "Lease Accounting"?</p> <p>14 A. That is correct.</p> <p>15 Q. As you sit here now do you recall</p> <p>16 anything else that's come to your attention,</p> <p>17 since you rendered your expert opinion on</p> <p>18 August 8, 2004?</p> <p>19 A. Well, since then I have received and</p> <p>20 read the reports of Dr. Prowse and the most</p> <p>21 recent report of Dr. Tuzin and the deposition</p> <p>22 transcripts of Dr. Tuzin and Mr. Stahlings. I</p> <p>23 reviewed, but not real carefully because it</p> <p>24 did not seem terribly pertinent, the internal</p> <p>25 control report of PricewaterhouseCoopers,</p>
<p style="text-align: right;">Page 327</p> <p>1 FUERMAN</p> <p>2 caused you to change your view of the</p> <p>3 competence, professionalism of</p> <p>4 PricewaterhouseCoopers?</p> <p>5 A. No.</p> <p>6 Q. You indicated in answer to a number</p> <p>7 of Mr. Brautigam's questions your view of how</p> <p>8 expert witnesses, the rules governing them</p> <p>9 should be interpreted or how you view that</p> <p>10 they ought to be construed?</p> <p>11 A. Yes.</p> <p>12 Q. Before this case you've never been</p> <p>13 an expert witness before, right?</p> <p>14 A. That is correct.</p> <p>15 MR. BURKE: That's it. With that</p> <p>16 I'll note the continuing objections I</p> <p>17 noted earlier. We'll see you in the</p> <p>18 morning.</p> <p>19 MR. BRAUTIGAM: Mr. Hiller, I</p> <p>20 understand you have no questions?</p> <p>21 MR. HILLER: No questions, but I'll</p> <p>22 stay.</p> <p>23 BY MR. BRAUTIGAM:</p> <p>24 Q. Dr. Fuerman, we talked earlier about</p> <p>25 some information that has come to light since</p>	<p style="text-align: right;">Page 329</p> <p>1 FUERMAN</p> <p>2 which I think is dated, oh, I don't know, a</p> <p>3 month later than the other</p> <p>4 PricewaterhouseCoopers report.</p> <p>5 Q. More or less late July of 2003,</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. Dr. Fuerman, do you consider</p> <p>9 yourself to be a fair man?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Do you think that the research</p> <p>12 you've conducted and the expert report you've</p> <p>13 rendered are fair?</p> <p>14 A. I do believe that they are very</p> <p>15 fair.</p> <p>16 Q. You talked about your work at</p> <p>17 Cardinal Industries. You mentioned that you</p> <p>18 felt that the boiler plate was no longer</p> <p>19 appropriate and you alerted people that it</p> <p>20 needed to be changed and that some people were</p> <p>21 not happy about that. Can you explain that,</p> <p>22 please.</p> <p>23 A. Specifically, when the president of</p> <p>24 Cardinal Industries heard what I had done he</p> <p>25 was furious with me. This actually put an end</p>

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2 to the real estate syndication that had been

3 going on at the company. But I knew that that

4 was likely to happen because once I spoke with

5 tax counsel they withdrew their opinions,

6 refused to provide any further opinions.

7 That was the end of any further real

8 estate syndications, but I felt that it was

9 the right thing to do. And I think later the

10 president of the company actually realized

11 that I had done the right thing too, because

12 had I not done that the Cardinal Industries,

13 Inc. would have been exposed to a lot greater

14 legal liability had we not acted to stop.

15 These are securities offerings.

16 These were private placements but,

17 nonetheless, they were securities offerings.

18 And to have continued them with tax opinions

19 that would have been misleading by them, that

20 would have been -- I think the president

21 realized that later that would have been

22 disastrous for the company, and I think he's

23 probably glad that I did what I did.

24 Q. Dr. Fuerman, did you realize at the

25 time your actions would have immediate and

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2 dramatic consequences?

3 A. Yes, I did.

4 Q. Did you take those actions in part

5 to protect investors and future investors or

6 potential investors?

7 A. Yes. I did not want to see any more

8 real estate limited partnership syndications

9 get sold to investors. That was part of my

10 motivation. It was also my motivation as an

11 attorney of Cardinal Industries, Inc. to try

12 to protect the company from unreasonable legal

13 liability.

14 Q. Dr. Fuerman, you teach a variety of

15 students at Suffolk University, correct?

16 A. That is correct.

17 Q. You teach from very basic courses to

18 fairly advanced courses, correct?

19 A. Yes, I do.

20 Q. In teaching accounting you teach

21 future accountants and C.P.A.s that at times

22 they have to exercise judgment, correct?

23 A. Oh, yes.

24 Q. What does that mean as an accountant

25 or C.P.A., "to exercise judgment in the

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1 FUERMAN

2 discharge of his or her duties"?

3 A. That means that -- it means several

4 things. It means that an account or C.P.A. is

5 a professional and all professionals have to

6 exercise professional judgment because it's

7 not all written down what we're supposed to do

8 in a specific situation.

9 Q. Now, Dr. Fuerman, you talked about

10 materiality being a concept. Do you remember

11 that testimony?

12 A. That's one of the things that I

13 teach in my auditing course.

14 Q. What do you mean by that?

15 A. Well, the notion of materiality

16 being a concept is part of traditional

17 accounting and auditing literature for

18 probably a hundred years.

19 But it got greater emphasis with the

20 issuance of staff accounting bulletin number

21 1999, I believe it was the year 1998 or 1999,

22 which emphasized a number of different

23 situations where, even though it might seem

24 like a small adjustment, the auditor must

25 require the company make that adjustment

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2 because it would, in a particular situation,

3 be material.

4 Either making or not making the

5 adjustment will be the difference between a

6 company making its earnings estimate or a

7 company going from net income to net loss or a

8 company changing the trend of its earnings. A

9 number of other examples are given also.

10 The specific example is given of a

11 question and answer format of a hypothetical

12 company, with a auditor coming in and if the

13 adjustment is or is not made is going to have

14 a 4 percent impact on net income. It's asked

15 well, that's not material because it's less

16 than 5 percent.

17 There's some accountants and

18 auditors that have been under the impression

19 that 5 percent is the materiality threshold.

20 The response of the SEC was no, materiality

21 can be much less than that. It depends on the

22 situation.

23 Then it went on to give at least

24 half a dozen examples of situations where even

25 though it's a small percentage change in

<p style="text-align: right;">Page 334</p> <p>1 FUERMAN</p> <p>2 materiality, it's regarded as material.</p> <p>3 Q. Dr. Fuerman, how would you define</p> <p>4 "materiality"?</p> <p>5 A. "Materiality" is that which would</p> <p>6 cause a reasonable investor to consider along</p> <p>7 with the mix of other information available</p> <p>8 changing his decision on, for example, whether</p> <p>9 to buy or sell stock or make other, some other</p> <p>10 decision that is typically influenced by</p> <p>11 financial statements.</p> <p>12 Q. So this information wouldn't</p> <p>13 necessarily affect the ultimate decision, but</p> <p>14 it's something that a shareholder would want</p> <p>15 to consider, correct?</p> <p>16 A. Exactly. It would cause a</p> <p>17 shareholder to consider making a change from</p> <p>18 buying a stock, buy a stock or sell a stock or</p> <p>19 agree to a merger or not agree to a merger</p> <p>20 would make not necessarily the investor</p> <p>21 actually change their decision, but consider</p> <p>22 changing their decision.</p> <p>23 Q. Now, Dr. Fuerman, we're here today</p> <p>24 because of proxy materials, correct?</p> <p>25 A. That is correct.</p>	<p style="text-align: right;">Page 336</p> <p>1 FUERMAN</p> <p>2 back to 1994, correct?</p> <p>3 A. That is correct.</p> <p>4 Q. You believe that the financial</p> <p>5 information Provident concluded upon by the</p> <p>6 OHSL shareholders were to make their decision</p> <p>7 in part was materially misstated, correct?</p> <p>8 MR. HILLER: Objection.</p> <p>9 A. I believe -- I've testified today</p> <p>10 that I believe that the 1997, '98, '99</p> <p>11 financial statements were materially</p> <p>12 misstated.</p> <p>13 Q. What is your opinion, if any, with</p> <p>14 respect to the financial information going</p> <p>15 back to yearend 1994 that Provident provided</p> <p>16 in the proxy materials?</p> <p>17 A. That information by the admission of</p> <p>18 Provident management was incorrect, was</p> <p>19 misstated. But by their choosing not to</p> <p>20 restate '94, '95 and '96, that constitutes an</p> <p>21 assertion of management that those years were</p> <p>22 not materially misstated.</p> <p>23 MR. HILLER: Objection.</p> <p>24 Q. Do you agree with that assertion or</p> <p>25 do you have some other opinion?</p>
<p style="text-align: right;">Page 335</p> <p>1 FUERMAN</p> <p>2 Q. Is it your understanding that these</p> <p>3 proxy materials were sent to the OHSL</p> <p>4 shareholders with a recommendation from the</p> <p>5 board of directors that they approve the</p> <p>6 merger?</p> <p>7 A. That is my distinct understanding,</p> <p>8 and that the proxy materials convey the</p> <p>9 impression that the board of directors</p> <p>10 unanimously supported voting for the merger</p> <p>11 and urged the ranking file shareholders to do</p> <p>12 so when, in fact, there was not a unanimous</p> <p>13 support among the board of directors to</p> <p>14 support the merger.</p> <p>15 There was one director who</p> <p>16 abstained, there was another director who was</p> <p>17 on vacation and a third director who perhaps</p> <p>18 because of the discomfort of the situation in</p> <p>19 being one of the directors who was opposed to</p> <p>20 the merger suddenly was off the board.</p> <p>21 MR. HILLER: Objection, move to</p> <p>22 strike.</p> <p>23 Q. Now, it's not disputed that the</p> <p>24 proxy materials contained financial</p> <p>25 information that Provident submitted that went</p>	<p style="text-align: right;">Page 337</p> <p>1 FUERMAN</p> <p>2 A. I would have to do further</p> <p>3 investigation to opine on that. I base my</p> <p>4 comments on the general interpretation of</p> <p>5 APB No. 20, that accounting and auditing</p> <p>6 academics and practitioners have, which is</p> <p>7 that the years that are restated are the ones</p> <p>8 that are admittedly materially misstated,</p> <p>9 omitted by the management of the company.</p> <p>10 Q. Is there any doubt in your mind that</p> <p>11 the financial information concluded in the</p> <p>12 proxy material from Provident, going back to</p> <p>13 1994, is incorrect?</p> <p>14 MR. HILLER: Objection.</p> <p>15 A. There's no doubt in my mind that</p> <p>16 it's incorrect, but I think it is important to</p> <p>17 draw a distinction between '94, '95 and '96,</p> <p>18 which though it may be incorrect is not</p> <p>19 admittedly materially misstated in contrast to</p> <p>20 years '97, '98, '99.</p> <p>21 Those years as APB 20 is interpreted</p> <p>22 by accounting and auditing academics and</p> <p>23 professionals, those years are materially</p> <p>24 misstated.</p> <p>25 Q. Do you believe that the wrong</p>

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2 financial information that Provident provided  
3 to OHSL shareholders in the proxy materials,  
4 between 1994 and 1997, is something that would  
5 have been of interest to a reasonable  
6 shareholder in making a decision as to how to  
7 vote with respect to the merger in 1999?  
8 MR. HILLER: Objection.  
9 A. I think it would be of interest.  
10 Q. Why?  
11 A. Because it's believed in the  
12 accounting auditing literature that one of the  
13 things that users of the financial statements  
14 want to do is not just look at the current  
15 year financial statements, but also prior  
16 years in order to establish, if they can,  
17 trends in earnings and in various line items  
18 of a company, so as to better predict the  
19 likelihood of future financial performance.  
20 MR. HILLER: Move to strike.  
21 Q. Now, Dr. Fuerman, there's a  
22 document, I think it's Plaintiffs' Exhibit 91,  
23 it's a memo from Bob Hoverson to all Provident  
24 employees, followed by three pages of Q and A  
25 with respect to issues on the restatement, and

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1 FUERMAN  
2 the date is April 15, 2003.  
3 Do you recall seeing that document?  
4 A. Yes, I do.  
5 Q. Under what happened I believe  
6 Mr. Hoverson says, and this is close to a  
7 quote, but not putting it in quotation marks,  
8 that Provident restated all the way back to  
9 1994.  
10 You disagree with that with respect  
11 to the technical definition of "restatement;"  
12 is that fair?  
13 A. Yes. I do not hold -- I believe  
14 Mr. Hoverson misspoke when he said restated  
15 all the way back to 1994, but I certainly do  
16 not hold that against him. He is not a C.P.A.  
17 and I would not necessarily expect him to, you  
18 know, know the difference.  
19 In the financial press the words  
20 restatement get thrown around and confused and  
21 used incorrectly sometimes.  
22 Q. But you don't necessarily disagree  
23 with the concept behind Mr. Hoverson's  
24 language that Provident's financial  
25 information, going all the way back to 1994,

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2 was wrong?  
3 A. There's no question. He himself  
4 admits in that press release that the  
5 information going back to '94 is incorrect.  
6 Q. Now, Dr. Fuerman, you have no  
7 experience with opinion polls, correct?  
8 A. No, I don't. I find it to be  
9 unreasonable to assume that that would be an  
10 appropriate way of determining what is  
11 material in the eyes of financial statement  
12 users.  
13 The financial accounting literature  
14 emphasizes so strongly forever that financial  
15 accounting is for the needs of a diverse group  
16 of users. Thus, it is counterproductive or  
17 useless to pool individual users as to what  
18 they think of the financial statements.  
19 Q. You've never work for Gallop,  
20 correct?  
21 A. I have not worked for Gallop or  
22 Zogby or any of the pollsters.  
23 Q. You've never worked for the Census,  
24 correct?  
25 A. I've never worked for the U.S.

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1 FUERMAN  
2 Census either.  
3 Q. Now, I believe it's fair that  
4 Mr. Burke's questioning can be described as  
5 suggesting that you should have taken a poll or  
6 conducted a census of the OHSL shareholders.  
7 Do you believe that is a fair characterization  
8 of some of your discussion with Mr. Burke this  
9 morning and this afternoon?  
10 MR. HILLER: Objection.  
11 A. I think so.  
12 Q. You didn't do that, meaning you  
13 didn't conduct a poll and you didn't take a  
14 census of OHSL shareholders, correct?  
15 A. No, I did not poll them. Even if I  
16 would have considered doing this, which I  
17 never would have, I don't know how I would  
18 have been able to get the names and addresses  
19 and phone numbers of these people.  
20 Q. Are you aware that OHSL had  
21 approximately 900 shareholders in 1999?  
22 A. No, I did not. It doesn't surprise  
23 me. It was a publicly held company and most  
24 publicly held companies have a fair number of  
25 shareholders.

<p style="text-align: right;">Page 342</p> <p>1 FUERMAN</p> <p>2 Q. Have you ever heard of an accepted</p> <p>3 methodology in rendering opinions, such as the</p> <p>4 opinions you have rendered, where polling the</p> <p>5 shareholders is required?</p> <p>6 A. No. That's contrary to the</p> <p>7 financial accounting literature and to</p> <p>8 APB No. 20 in particular.</p> <p>9 Q. It's contrary to the concept of a</p> <p>10 class action, correct?</p> <p>11 MR. HILLER: Objection.</p> <p>12 A. Well, yes, in that "class actions"</p> <p>13 by definition are lawsuits that involve large</p> <p>14 numbers of people. That's why the courts</p> <p>15 created the class action mechanism, is because</p> <p>16 large number of people are affected.</p> <p>17 So it's just another way of saying</p> <p>18 it's just not practical, not feasible to use</p> <p>19 polling as any kind of a technique in</p> <p>20 researching the views of users of OHSL</p> <p>21 financial statements.</p> <p>22 Q. Now, Dr. Fuerman, you also talked</p> <p>23 about an "event study" in your discussions</p> <p>24 with Mr. Burke. Do you remember that?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 344</p> <p>1 FUERMAN</p> <p>2 Q. And it seemed at times you were</p> <p>3 struggling to recall the exact magic words</p> <p>4 that auditors sometimes use. Has your</p> <p>5 recollection been refreshed over the time?</p> <p>6 A. Yes.</p> <p>7 Q. What are those words you were</p> <p>8 seeking before, as best you recall now?</p> <p>9 A. The auditor opines that the</p> <p>10 financials -- that he is providing reasonable</p> <p>11 assurance that the financials are materially,</p> <p>12 fairly presented. That they are -- I think</p> <p>13 the phrase is something along the lines of</p> <p>14 that they are fairly presented in all material</p> <p>15 respects.</p> <p>16 Q. I think there's another line because</p> <p>17 we've discussed this in the deposition of</p> <p>18 Provident directors extensively, that the</p> <p>19 opinion letter provides reasonable assurance</p> <p>20 that the financial statements are free of</p> <p>21 material misstatement. Does that ring a bell?</p> <p>22 A. Yes, that's the same thing as saying</p> <p>23 they are fairly presented in all material</p> <p>24 respects and in conformance with generally</p> <p>25 accepted accounting principles. Those words</p>
<p style="text-align: right;">Page 343</p> <p>1 FUERMAN</p> <p>2 Q. An "event study" is a concept that</p> <p>3 economists use, correct?</p> <p>4 A. It's used by economists and also</p> <p>5 finance professors. A lot of people feel</p> <p>6 finance is simply a branch of economics. I</p> <p>7 don't use them in my research. They are</p> <p>8 important studies, but I choose a different</p> <p>9 mode of research, different areas to research</p> <p>10 than that.</p> <p>11 Q. In fact, you are not qualified to</p> <p>12 perform an event study, in the sense that an</p> <p>13 economist or a finance professor might do an</p> <p>14 event study, correct?</p> <p>15 A. No, I don't feel that I am. I</p> <p>16 received the basic knowledge on how to conduct</p> <p>17 event studies through Ph.D. seminars at the</p> <p>18 University of Cincinnati. But, you know, you</p> <p>19 need a lot more than that to be able to</p> <p>20 competently carry out event studies.</p> <p>21 Q. We talked earlier about the opinion</p> <p>22 letter that appears in the 10Ks and the annual</p> <p>23 reports of public companies. Do you remember</p> <p>24 that testimony generally?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 345</p> <p>1 FUERMAN</p> <p>2 and phrases you will find in the auditors</p> <p>3 report.</p> <p>4 Q. Have you reached a conclusion as to</p> <p>5 whether or not Provident's financial</p> <p>6 statements, from 2002 going back to 1997 and</p> <p>7 perhaps 1994, were consistent with GAAP?</p> <p>8 A. They by the admission of the</p> <p>9 company's management and board of directors</p> <p>10 were in violation of the GAAP. There's no</p> <p>11 dispute over that.</p> <p>12 Q. Well, apparently --</p> <p>13 MR. HILLER: Objection.</p> <p>14 Q. There may be. Is there any set of</p> <p>15 circumstances that you can think of where a</p> <p>16 company restates and says hey, this was really</p> <p>17 optional, we were in compliance with GAAP even</p> <p>18 though we did restate?</p> <p>19 MR. HILLER: Objection.</p> <p>20 A. That does not appear to have been</p> <p>21 the testimony of the Provident executives from</p> <p>22 the deposition transcripts that I read and</p> <p>23 reviewed. They seem to admit that they were</p> <p>24 putting out financials that were contrary to</p> <p>25 GAAP. I don't remember that they argued that</p>

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2 point.

3 Q. Okay.

4 A. The only point they argued was as

5 to, some of them, as to materiality, but not

6 as to the fact that the originally issued

7 financials contradicted or violated GAAP.

8 Q. Let's talk about the actual OHSL

9 Provident merger itself. You testified

10 previously that this was a stock-for-stock

11 merger, correct?

12 A. Correct.

13 Q. You also talked about an "upsetting

14 event." Do you remember that?

15 A. Right.

16 Q. Even though the restatement for

17 Provident did not happen in 1999, had it

18 happened in 1999, do you believe that it would

19 have been considered an "upsetting event"?

20 A. Oh, yes, extremely upsetting.

21 Q. Why?

22 MR. HILLER: Objection, move to

23 strike.

24 A. The financials would no longer be

25 regarded as credible and reliable, for one

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2 thing. The profitability of the company even

3 per the new restated downward numbers would be

4 lower, and it's the historical financials, in

5 particular, the historical earnings per share

6 that are extrapolated outward to try to

7 prognosticate what future earnings per share

8 are going to be.

9 That's the starting point in all

10 financial statement analysis.

11 MR. HILLER: Move to strike.

12 Q. Now, Dr. Fuerman, earlier you

13 testified, and I wrote this phrase down so I

14 think it's exact, "It's no longer the deal the

15 parties had agreed to." Do you remember

16 saying that in words or substance?

17 A. Yes.

18 Q. Can you please explain this concept.

19 A. Well, if the shareholders of a

20 company agree to give up their shares for

21 shares in another company that they have been

22 lead to believe are worth \$50 a share, and

23 suddenly they are told they are giving up

24 shares in their own company for shares in a

25 company that is only worth 30 bucks a share,

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2 \$30 a share, they are not going to go along

3 with that. They are just -- that is a sudden

4 change in the terms of the deal to their

5 disadvantage.

6 MR. HILLER: Objection.

7 Q. This is certainly something that a

8 reasonable shareholder would want to consider

9 in arriving at his or her decision as to how

10 to vote with respect to the OHSL Provident

11 merger, correct?

12 A. Yes.

13 MR. HILLER: Objection.

14 A. I believe that, as Bernstein and

15 Wild do, the foundation of equity valuation is

16 earnings per share, what is the projected

17 earnings per share of the company. The

18 starting point for trying to figure out what

19 the projected earnings per share for the

20 company is what are the historical earnings

21 per share of the company.

22 So if suddenly you drastically

23 downward revise the historical earnings per

24 share of the company, you follow the chain,

25 you are revising downward the equity

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2 valuation, the valuation of the stocks of the

3 company. That's fundamental stuff. We can

4 argue about how much.

5 That's the province of economists,

6 and I know there have been economists retained

7 as expert witnesses on both sides of this

8 litigation, but there can't be any serious

9 dispute as to if it is a substantial earnings

10 per share downward revision, that's going to

11 be material.

12 MR. HILLER: Move to strike the last

13 couple of sentences.

14 Q. So reduced to lowest terms, this is

15 important information that reasonable

16 shareholders would want to consider, correct?

17 MR. HILLER: Objection.

18 A. Yes.

19 Q. Now, with respect to the March 5,

20 2003 restatement, you testified in substance

21 that Provident had recognized too much net

22 income too early, and that they clearly

23 misunderstood how to do the accounting for

24 auto lease transactions.

25 First of all, is that entirely

<p style="text-align: right;">Page 350</p> <p>1 FUERMAN</p> <p>2 consistent with the PWC report?</p> <p>3 MR. HILLER: Objection.</p> <p>4 A. Yes.</p> <p>5 Q. Secondly, does that mean Provident</p> <p>6 presented to the investing company, including</p> <p>7 OHSL shareholders, that their financial</p> <p>8 position was better than it actually was?</p> <p>9 MR. HILLER: Objection.</p> <p>10 A. Yes.</p> <p>11 Q. Is this information that a</p> <p>12 reasonable shareholder would have wanted to</p> <p>13 consider in 1999?</p> <p>14 In other words, I understand it</p> <p>15 wasn't available, but if it was available</p> <p>16 would you expect reasonable shareholders to</p> <p>17 consider that in informing their decision as</p> <p>18 to vote for or against the merger?</p> <p>19 MR. HILLER: Objection.</p> <p>20 A. Yes, they would in my opinion</p> <p>21 clearly want to know that information.</p> <p>22 Q. Why?</p> <p>23 A. Because as pointed out by Bernstein</p> <p>24 and Wild and all the other financial analysis</p> <p>25 statement textbooks, the historical earnings</p>	<p style="text-align: right;">Page 352</p> <p>1 FUERMAN</p> <p>2 of the words was "restatement." Do you</p> <p>3 remember that?</p> <p>4 A. Yes.</p> <p>5 Q. In some instances you weren't able</p> <p>6 to find the exact word. Do you remember that?</p> <p>7 A. Right.</p> <p>8 Q. If you can't find the exact word in</p> <p>9 APB 20, please explain why your opinion</p> <p>10 retains validity?</p> <p>11 MR. HILLER: Objection.</p> <p>12 A. Well, because there are some places</p> <p>13 where the exact same concept of "restatement"</p> <p>14 is expressed in APB 20 with the phrase "prior</p> <p>15 period adjustment" or the phrase "retroactive</p> <p>16 treatment." All three of those mean the same</p> <p>17 thing.</p> <p>18 It's natural that since they are</p> <p>19 synonyms you are not going to have the word</p> <p>20 "restatement" everywhere in every situation</p> <p>21 where you might want it to be and be</p> <p>22 explained, as to what it means in the context</p> <p>23 of this or that or the next thing in</p> <p>24 APB No. 20. It just won't be there.</p> <p>25 Instead, you will have the phrase</p>
<p style="text-align: right;">Page 351</p> <p>1 FUERMAN</p> <p>2 are revised downwards, that leads usually to a</p> <p>3 downward revision in projected future earnings</p> <p>4 per share, which usually leads to a downward</p> <p>5 revision in the expected stock price.</p> <p>6 Q. In your expert report which we had</p> <p>7 previously marked as Plaintiffs' Exhibit 115,</p> <p>8 I'm directing your attention particularly to</p> <p>9 paragraph 18, did you intend to quote</p> <p>10 specifically APB No. 20?</p> <p>11 A. No.</p> <p>12 Q. And that's because you had to</p> <p>13 explain and interpret it using your own</p> <p>14 language for your intended audience; is that</p> <p>15 correct?</p> <p>16 MR. HILLER: Objection.</p> <p>17 A. That's right. APB No. 20 is in</p> <p>18 places straight forward, but in others</p> <p>19 convoluted and I could not just quote snippets</p> <p>20 of it. I had to put whole parts of it in my</p> <p>21 own words to make it understandable in the</p> <p>22 expert report.</p> <p>23 Q. Do you remember this morning</p> <p>24 Mr. Burke spend a great deal of time saying</p> <p>25 show me where this word appears in APB 20, one</p>	<p style="text-align: right;">Page 353</p> <p>1 FUERMAN</p> <p>2 "retroactive treatment" or "prior period</p> <p>3 adjustment."</p> <p>4 Q. So your report contains the spirit,</p> <p>5 the intent, the flavor, if you will, of APB</p> <p>6 20; is that correct?</p> <p>7 A. Yes, that is my belief.</p> <p>8 Q. And it's also your belief that the</p> <p>9 methodology and the conclusions that you've</p> <p>10 reached are consistent with other experts in</p> <p>11 your field, correct?</p> <p>12 A. Yes. The opinions I've expressed</p> <p>13 today as to APB No. 20 are very mainstream,</p> <p>14 within the accounting and auditing academic</p> <p>15 and professional communities. I would be</p> <p>16 shocked if any of the people who have cited me</p> <p>17 on restatements research, or that I cite on</p> <p>18 restatements research, if they would disagree</p> <p>19 with me in any substantive way about my</p> <p>20 testimony on APB No. 20.</p> <p>21 Q. To some extent, although perhaps not</p> <p>22 completely, the conclusions that you've</p> <p>23 reached are consistent with the testimony of</p> <p>24 the officers and directors of Provident,</p> <p>25 correct?</p>

<p style="text-align: right;">Page 354</p> <p>1 FUERMAN</p> <p>2 A. Yes. I mean, some of the officers</p> <p>3 and directors of Provident have stated, in one</p> <p>4 way or another, their belief that the</p> <p>5 originally issued financials were materially</p> <p>6 misstated. Others have been, have expressed</p> <p>7 different opinions in the deposition</p> <p>8 transcripts.</p> <p>9 Q. Dr. Fuerman, I want to shift gears a</p> <p>10 little bit back to your experience as a</p> <p>11 certified fraud examiner. Are you with me?</p> <p>12 A. Yes.</p> <p>13 Q. Mr. Burke asked you a series of</p> <p>14 questions about whether you had worked for the</p> <p>15 CIA or the Army. Do you remember that</p> <p>16 testimony generally?</p> <p>17 A. That's correct.</p> <p>18 Q. He seemed to suggest that you were</p> <p>19 not able to evaluate the credibility of</p> <p>20 witnesses. Do you remember that testimony</p> <p>21 generally?</p> <p>22 A. Yes, that seems to be a gist of what</p> <p>23 he was implying by his questions. But I</p> <p>24 reject that contention. I believe if you were</p> <p>25 to be a skilled interviewer or interrogator</p>	<p style="text-align: right;">Page 356</p> <p>1 FUERMAN</p> <p>2 correct?</p> <p>3 MR. HILLER: Objection.</p> <p>4 A. That is correct, except that I would</p> <p>5 not have the benefit of the body language and</p> <p>6 non-verbal behaviors that could be observed by</p> <p>7 a jury. On the other hand, there is an</p> <p>8 advantage to just doing the analysis based on</p> <p>9 transcripts, and that is that perhaps I could</p> <p>10 be biased in some way or another by the</p> <p>11 physical appearance of somebody who was</p> <p>12 deposed.</p> <p>13 Q. You are not as easily swayed by</p> <p>14 flash or style, correct?</p> <p>15 A. Well, no, if you are just looking at</p> <p>16 a transcript. You are only analyzing the</p> <p>17 verbal attempts at deception.</p> <p>18 Q. Okay. Dr. Fuerman, you talked about</p> <p>19 in one of your previous answers to a question</p> <p>20 from Mr. Burke that you didn't have a time</p> <p>21 machine. Do you remember that testimony?</p> <p>22 A. That's correct.</p> <p>23 Q. So, in a sense, the report that you</p> <p>24 have produced, including the charts,</p> <p>25 represents rough justice because we don't have</p>
<p style="text-align: right;">Page 355</p> <p>1 FUERMAN</p> <p>2 you need to do lots of interviews and</p> <p>3 interrogations.</p> <p>4 But to be skilled at analyzing</p> <p>5 transcripts of interviews, interrogations or</p> <p>6 depositions that's not necessary. I think</p> <p>7 what's more important is your study and your</p> <p>8 knowledge that you've obtained from books,</p> <p>9 articles and workshops, as I have, and in your</p> <p>10 teaching.</p> <p>11 And, therefore, I feel very</p> <p>12 comfortable making the statements that I've</p> <p>13 made, with regard to the reactions stated by</p> <p>14 the Provident executives and board members</p> <p>15 towards the restatements.</p> <p>16 Q. Dr. Fuerman, these conclusions are</p> <p>17 in a sense evaluating the credibility of</p> <p>18 witnesses whom you haven't seen, but whose</p> <p>19 transcripts you've evaluated, correct?</p> <p>20 A. Right, I've only evaluated the</p> <p>21 transcripts.</p> <p>22 Q. Right. With the exception of not</p> <p>23 having seen the witnesses give the testimony,</p> <p>24 either on videotape or in person, you were</p> <p>25 doing exactly what a jury is charged to do,</p>	<p style="text-align: right;">Page 357</p> <p>1 FUERMAN</p> <p>2 a time machine, correct?</p> <p>3 A. That is correct. I think the "time</p> <p>4 machine" remark was in the context of the SEC</p> <p>5 observer came out with an announcement that</p> <p>6 could be interpreted as the announcement of</p> <p>7 new GAAP on lease accounting. Subsequent to</p> <p>8 that Wells Fargo restated.</p> <p>9 That is completely different than</p> <p>10 Provident restating prior to that announcement</p> <p>11 by the SEC observer, because it becomes not a</p> <p>12 matter of going from GAAP conformance to</p> <p>13 another kind of a GAAP conformance, but in the</p> <p>14 case of Provident GAAP non-conformance to GAAP</p> <p>15 conformance. That's completely different.</p> <p>16 Under APB No. 20 that's an error and</p> <p>17 it's not a technical or gray area of</p> <p>18 restatement as Wells Fargo is. It's a clear</p> <p>19 unequivocal admission that the previously</p> <p>20 issued financials were materially misstated</p> <p>21 that Provident made when it restated on</p> <p>22 April 15, 2003.</p> <p>23 MR. HILLER: Move to strike.</p> <p>24 Q. Dr. Fuerman, let's talk about</p> <p>25 Provident's audit committee.</p>

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<p style="text-align: right;">Page 358</p> <p>1 FUERMAN</p> <p>2 A. Yes.</p> <p>3 Q. You agree that the members of</p> <p>4 Provident's audit committee should be</p> <p>5 financially literal, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Do you also agree that the members</p> <p>8 of Provident's board should be financially</p> <p>9 literal?</p> <p>10 A. Well, ideally they should be, but I</p> <p>11 really have more specific expertise on the</p> <p>12 requirements of members of audit committees.</p> <p>13 I've specifically studied that matter. That's</p> <p>14 what actually I opined on in my expert report,</p> <p>15 is my evaluation of the three members of the</p> <p>16 audit committee of Provident.</p> <p>17 I didn't make comments about the</p> <p>18 other members of the board of directors. I</p> <p>19 felt that two of them were, under the NASDAQ</p> <p>20 listing standards, they were regarded as</p> <p>21 sufficiently knowledgeable because they had</p> <p>22 knowledge of fundamental financial statements</p> <p>23 which is what NASDAQ requires, but the third</p> <p>24 did not possess that.</p> <p>25 I felt that Mr. Grotti was so</p>	<p style="text-align: right;">Page 360</p> <p>1 FUERMAN</p> <p>2 However, I must clarify that I am an expert on</p> <p>3 audit committees, not on the rules governing</p> <p>4 the boards as a whole.</p> <p>5 Q. Back to Tom Grotti. You testified</p> <p>6 that it's the job of the audit committee to</p> <p>7 supervise the independent accountants,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. To an extent it's also the job of</p> <p>11 the audit committee to supervise the internal</p> <p>12 auditors at Provident, for example, correct?</p> <p>13 A. Correct.</p> <p>14 Q. And an accountant once told me that</p> <p>15 "accounting is the language of business," do</p> <p>16 you agree with that?</p> <p>17 A. That's in all the accounting</p> <p>18 textbooks, that's in the first chapter. It's</p> <p>19 always stated that that's true, and that's why</p> <p>20 it's so important that business students,</p> <p>21 regardless of what their major, study</p> <p>22 accounting.</p> <p>23 Q. Do you believe that Tom Grotti spoke</p> <p>24 and understood the language of business?</p> <p>25 A. Not sufficient to be regarded as a</p>
<p style="text-align: right;">Page 359</p> <p>1 FUERMAN</p> <p>2 deficient in his knowledge and understanding</p> <p>3 of accounting, auditing, financial statements</p> <p>4 that he could not be regarded as being</p> <p>5 sufficiently knowledgeable on the things that</p> <p>6 an audit committee member is supposed to be</p> <p>7 knowledgeable about, under the NASDAQ listing</p> <p>8 standards.</p> <p>9 Q. Okay. We'll come back to</p> <p>10 Mr. Grotti. I want to talk about another</p> <p>11 member of Provident's board, Dr. Peerless, who</p> <p>12 was a medical doctor on Provident's board for</p> <p>13 27 years. I asked Dr. Peerless if he was</p> <p>14 familiar with GAAP, and he said, "the clothing</p> <p>15 store?" I said no, not the clothing store,</p> <p>16 G-A-A-P, all caps. He said he was not</p> <p>17 familiar with GAAP, he was not familiar with</p> <p>18 GAS.</p> <p>19 Do you believe that that person</p> <p>20 should be on any board of any public company</p> <p>21 in the United States?</p> <p>22 MR. HILLER: Objection.</p> <p>23 A. I think it's certainly not advisable</p> <p>24 that a person with such a lack of knowledge of</p> <p>25 accounting and auditing be on the board.</p>	<p style="text-align: right;">Page 361</p> <p>1 FUERMAN</p> <p>2 proper audit committee member under the NASDAQ</p> <p>3 listing rules, in my opinion.</p> <p>4 Q. Now, Mr. Burke seems to suggest to</p> <p>5 you that if the audit committee trodded in</p> <p>6 experts and they spewed forth opinions that</p> <p>7 the audit committee was doing just fine, do</p> <p>8 you agree with that?</p> <p>9 MR. HILLER: Objection.</p> <p>10 A. I don't agree that they cannot even</p> <p>11 meet the listing standards under NASDAQ and be</p> <p>12 proper audit committee members.</p> <p>13 What I do agree with, if that's what</p> <p>14 Mr. Burke was saying, is that in a given</p> <p>15 situation that arises where a fairly strong</p> <p>16 knowledge needs to be developed by members of</p> <p>17 the audit committee to deal with a specific</p> <p>18 situation, where they need to know at a higher</p> <p>19 level than usual a specific accounting</p> <p>20 standard, then they need to, if necessary,</p> <p>21 they need to bring in people who can quickly</p> <p>22 educate them and bring them up to speed on</p> <p>23 that specific accounting standard.</p> <p>24 I would have thought that facing a</p> <p>25 restatement that would have been the occasion</p>

<p style="text-align: right;">Page 362</p> <p>1 FUERMAN</p> <p>2 for experts from Ernst and Young, for example,</p> <p>3 to come in and bring the audit committee</p> <p>4 members up to speed on exactly what is APB</p> <p>5 Opinion No. 20 and what does it -- what does</p> <p>6 it tell us so far as whether Provident should</p> <p>7 restate or not, what years it should restate.</p> <p>8 Q. All right. So if I can paraphrase.</p> <p>9 If you grabbed a guy from an audit committee</p> <p>10 from a steel company, which I think was your</p> <p>11 example, and you said hey, do you know what</p> <p>12 the difference is between an operating lease</p> <p>13 and a finance lease, he may not know, but he</p> <p>14 or she could certainly fulfill his duties as a</p> <p>15 board member and as an audit committee member</p> <p>16 in those circumstances, correct?</p> <p>17 A. Correct, but the industry specific</p> <p>18 knowledge is important for audit committee</p> <p>19 members.</p> <p>20 Q. But, would you expect a former audit</p> <p>21 committee member on Provident's board, in</p> <p>22 2004, to be able to explain intelligently the</p> <p>23 difference between an operating lease and a</p> <p>24 finance lease, given that they presumably</p> <p>25 discussed this at board and audit committee</p>	<p style="text-align: right;">Page 364</p> <p>1 FUERMAN</p> <p>2 of being in the industry that it is. The</p> <p>3 Provident board, audit committee board, audit</p> <p>4 committee members, their need to understand</p> <p>5 lease accounting is much greater than the</p> <p>6 audit committee of a steel company.</p> <p>7 Q. Dr. Fuerman, when you came here</p> <p>8 today and you raised your right hand, the</p> <p>9 first thing you did was to swear to tell the</p> <p>10 truth, the whole truth and nothing but the</p> <p>11 truth, correct?</p> <p>12 A. Correct.</p> <p>13 Q. You've seen the proxy materials at</p> <p>14 issue with respect to this transaction,</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. You've reviewed them thoroughly,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. While it was your -- while you were</p> <p>21 retained to render an opinion with respect to</p> <p>22 materiality and restatements, you also noticed</p> <p>23 the unanimity issue you spoke to earlier</p> <p>24 correct?</p> <p>25 A. Yes, I noticed that. And I'm not a</p>
<p style="text-align: right;">Page 363</p> <p>1 FUERMAN</p> <p>2 meetings and that they were presumably</p> <p>3 educated by experts on these differences?</p> <p>4 A. I would expect that because that's</p> <p>5 the bread and butter business of a bank like</p> <p>6 Provident, to enter into leasing transactions</p> <p>7 and then securitization of those leases. It</p> <p>8 just seems to be reasonable to expect a fairly</p> <p>9 good knowledge of that from the audit</p> <p>10 committee members at a bank like Provident.</p> <p>11 Q. Dr. Fuerman, one of the GAS</p> <p>12 standards is planning the audit, correct?</p> <p>13 A. Correct.</p> <p>14 Q. A second GAS standard is</p> <p>15 understanding the industry, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Do you believe that audit committee</p> <p>18 members should have some basic understanding</p> <p>19 of both those things, not necessarily from the</p> <p>20 perspective of the auditor, but from the</p> <p>21 perspective of the audit committee of the</p> <p>22 board?</p> <p>23 A. Oh, yeah. They need to have</p> <p>24 specific knowledge of the accounting and</p> <p>25 auditing that relates to the company because</p>	<p style="text-align: right;">Page 365</p> <p>1 FUERMAN</p> <p>2 language -- an expert on all the aspects of</p> <p>3 what securities law expects to be in the proxy</p> <p>4 statement, but it just seems against common</p> <p>5 sense, from a layman's point of view, to</p> <p>6 permit a proxy to state that the board of</p> <p>7 directors unanimously recommended the ranking</p> <p>8 file shareholders vote for this merger when</p> <p>9 not all eight of the directors supported that.</p> <p>10 MR. HILLER: Move to strike.</p> <p>11 Q. Dr. Fuerman, do you believe that the</p> <p>12 proxy materials told the truth, the whole</p> <p>13 truth and nothing but the truth with respect</p> <p>14 to the OHSL Provident merger?</p> <p>15 MR. HILLER: Objection.</p> <p>16 A. No, I do not.</p> <p>17 Q. You mentioned the unanimity as being</p> <p>18 one of the areas; is that correct?</p> <p>19 A. That is one of the areas.</p> <p>20 Q. And, also, in much greater detail</p> <p>21 the testimony you've given about Provident's</p> <p>22 financial information included in that</p> <p>23 document being either materially misstated or</p> <p>24 incorrect, right?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 366</p> <p>1 FUERMAN</p> <p>2 MR. HILLER: Objection, move to</p> <p>3 strike.</p> <p>4 Q. And because of these</p> <p>5 representations, material or otherwise, the</p> <p>6 deal that the OHSL shareholders got was not</p> <p>7 the deal that they had agreed to, correct?</p> <p>8 MR. HILLER: Objection.</p> <p>9 A. That's very clear to me.</p> <p>10 MR. BRAUTIGAM: Dr. Fuerman, I thank</p> <p>11 you, very much, for your time.</p> <p>12 A. Thank you.</p> <p>13 -o0o-</p> <p>14 (Whereupon, the deposition of</p> <p>15 ROSS D. FUERMAN, PH.D., was concluded at</p> <p>16 6:57 p.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20 ROSS D. FUERMAN</p> <p>21</p> <p>22 Subscribed and sworn to before me</p> <p>23 this ____ day of _____, 2004.</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 368</p> <p>1</p> <p>2</p> <p>3 ----- I N D E X -----</p> <p>4</p> <p>5 WITNESS EXAMINATION BY PAGE</p> <p>6 ROSS FUERMAN MR. BURKE 6, 326</p> <p>7 MR. BRAUTIGAM 296, 327</p> <p>8</p> <p>9 ----- INFORMATION REQUESTS -----</p> <p>10</p> <p>11 DIRECTIONS:</p> <p>12 RULINGS:</p> <p>13 TO BE FURNISHED:</p> <p>14 REQUESTS: Page 238</p> <p>15 MOTIONS:</p> <p>16</p> <p>17 ----- EXHIBITS -----</p> <p>18</p> <p>19 FUERMAN'S EXHIBITS 1 - 7 MARKED FOR ID.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 367</p> <p>1</p> <p>2 C E R T I F I C A T E</p> <p>3 STATE OF NEW YORK )</p> <p>4 : ss.</p> <p>5 COUNTY OF NEW YORK )</p> <p>6</p> <p>7 I, Toni Allegrucci, a Notary Public</p> <p>8 within and for the State of New York, do</p> <p>9 hereby certify:</p> <p>10 That ROSS D. FUERMAN, PH.D., the</p> <p>11 witness whose deposition is hereinbefore</p> <p>12 set forth, was duly sworn by me and that</p> <p>13 such deposition is a true record of the</p> <p>14 testimony given by the witness.</p> <p>15 I further certify that I am not</p> <p>16 related to any of the parties to this</p> <p>17 action by blood or marriage, and that I</p> <p>18 am in no way interested in the outcome of</p> <p>19 this matter.</p> <p>20 IN WITNESS WHEREOF, I have hereunto</p> <p>21 set my hand this 26th day of November,</p> <p>22 2004.</p> <p>23</p> <p>24</p> <p>25 TONI ALLEG RUCCI</p>	